

**ASSEMBLY BILL**

**No. 1191**

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**Introduced by Assembly Member Nazarian**

February 27, 2015

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An act to amend Section 66477 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

AB 1191, as introduced, Nazarian. Quimby Act: fees.

The Quimby Act, within the Subdivision Map Act, authorizes the legislative body of a city or county to require the dedication of land or to impose fees for park or recreational purposes as a condition of the approval of a tentative or parcel subdivision map, if specified requirements are met.

This bill would define the term “fee,” as used in the Quimby Act with regard to the expenditure of fees, to include any interest income generated from a fee charged and collected pursuant to that act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 66477 of the Government Code is  
2     amended to read:  
3     66477. (a) The legislative body of a city or county may, by  
4     ordinance, require the dedication of land or impose a requirement  
5     of the payment of fees in lieu thereof, or a combination of both,  
6     for park or recreational purposes as a condition to the approval of

1 a tentative map or parcel map, if all of the following requirements  
2 are met:

3 (1) The ordinance has been in effect for a period of 30 days  
4 prior to the filing of the tentative map of the subdivision or parcel  
5 map.

6 (2) The ordinance includes definite standards for determining  
7 the proportion of a subdivision to be dedicated and the amount of  
8 any fee to be paid in lieu thereof. The amount of land dedicated  
9 or fees paid shall be based upon the residential density, which shall  
10 be determined on the basis of the approved or conditionally  
11 approved tentative map or parcel map and the average number of  
12 persons per household. There shall be a rebuttable presumption  
13 that the average number of persons per household by units in a  
14 structure is the same as that disclosed by the most recent available  
15 federal census or a census taken pursuant to Chapter 17  
16 (commencing with Section 40200) of Part 2 of Division 3 of Title  
17 4. However, the dedication of land, or the payment of fees, or both,  
18 shall not exceed the proportionate amount necessary to provide  
19 three acres of park area per 1,000 persons residing within a  
20 subdivision subject to this section, unless the amount of existing  
21 neighborhood and community park area, as calculated pursuant to  
22 this subdivision, exceeds that limit, in which case the legislative  
23 body may adopt the calculated amount as a higher standard not to  
24 exceed five acres per 1,000 persons residing within a subdivision  
25 subject to this section.

26 (A) The park area per 1,000 members of the population of the  
27 city, county, or local public agency shall be derived from the ratio  
28 that the amount of neighborhood and community park acreage  
29 bears to the total population of the city, county, or local public  
30 agency as shown in the most recent available federal census. The  
31 amount of neighborhood and community park acreage shall be the  
32 actual acreage of existing neighborhood and community parks of  
33 the city, county, or local public agency as shown on its records,  
34 plans, recreational element, maps, or reports as of the date of the  
35 most recent available federal census.

36 (B) For cities incorporated after the date of the most recent  
37 available federal census, the park area per 1,000 members of the  
38 population of the city shall be derived from the ratio that the  
39 amount of neighborhood and community park acreage shown on  
40 the maps, records, or reports of the county in which the newly

1 incorporated city is located bears to the total population of the new  
2 city as determined pursuant to Section 11005 of the Revenue and  
3 Taxation Code. In making any subsequent calculations pursuant  
4 to this section, the county in which the newly incorporated city is  
5 located shall not include the figures pertaining to the new city  
6 which were calculated pursuant to this paragraph. Fees shall be  
7 payable at the time of the recording of the final map or parcel map,  
8 or at a later time as may be prescribed by local ordinance.

9 (3) (A) The land, fees, or combination thereof are to be used  
10 only for the purpose of developing new or rehabilitating existing  
11 neighborhood or community park or recreational facilities to serve  
12 the subdivision, except as provided in subparagraph (B).

13 (B) Notwithstanding subparagraph (A), fees may be used for  
14 the purpose of developing new or rehabilitating existing park or  
15 recreational facilities in a neighborhood other than the  
16 neighborhood in which the subdivision for which fees were paid  
17 as a condition to the approval of a tentative map or parcel map is  
18 located, if all of the following requirements are met:

19 (i) The neighborhood in which the fees are to be expended has  
20 fewer than three acres of park area per 1,000 members of the  
21 neighborhood population.

22 (ii) The neighborhood in which the subdivision for which the  
23 fees were paid has a park area per 1,000 members of the  
24 neighborhood population ratio that meets or exceeds the ratio  
25 calculated pursuant to subparagraph (A) of paragraph (2), but in  
26 no event is less than three acres per 1,000 persons.

27 (iii) The legislative body holds a public hearing before using  
28 the fees pursuant to this subparagraph.

29 (iv) The legislative body makes a finding supported by  
30 substantial evidence that it is reasonably foreseeable that future  
31 inhabitants of the subdivision for which the fee is imposed will  
32 use the proposed park and recreational facilities in the  
33 neighborhood where the fees are used.

34 (v) The fees are used within a specified radius that complies  
35 with the city's or county's ordinance adopted pursuant to  
36 subdivision (a), and are consistent with the adopted general plan  
37 or specific plan of the city or county. For purposes of this clause,  
38 "specified radius" includes a planning area, zone of influence, or  
39 other geographic region designated by the city or county, that  
40 otherwise meets the requirements of this section.

1 (4) The legislative body has adopted a general plan or specific  
2 plan containing policies and standards for parks and recreational  
3 facilities, and the park and recreational facilities are in accordance  
4 with definite principles and standards.

5 (5) The amount and location of land to be dedicated or the fees  
6 to be paid shall bear a reasonable relationship to the use of the  
7 park and recreational facilities by the future inhabitants of the  
8 subdivision.

9 (6) (A) The city, county, or other local public agency to which  
10 the land or fees are conveyed or paid shall develop a schedule  
11 specifying how, when, and where it will use the land or fees, or  
12 both, to develop park or recreational facilities to serve the residents  
13 of the subdivision. Any fees collected under the ordinance shall  
14 be committed within five years after the payment of the fees or  
15 the issuance of building permits on one-half of the lots created by  
16 the subdivision, whichever occurs later. If the fees are not  
17 committed, they, without any deductions, shall be distributed and  
18 paid to the then record owners of the subdivision in the same  
19 proportion that the size of their lot bears to the total area of all lots  
20 within the subdivision.

21 (B) The city, county, or other local agency to which the land or  
22 fees are conveyed or paid may enter into a joint or shared use  
23 agreement with one or more other public districts in the  
24 jurisdiction, including, but not limited to, a school district or  
25 community college district, in order to provide access to park or  
26 recreational facilities to residents of subdivisions with fewer than  
27 three acres of park area per 1,000 members of the population.

28 (7) Only the payment of fees may be required in subdivisions  
29 containing 50 parcels or less, except that when a condominium  
30 project, stock cooperative, or community apartment project, as  
31 those terms are defined in Sections 4105, 4125, and 4190 of the  
32 Civil Code, exceeds 50 dwelling units, dedication of land may be  
33 required notwithstanding that the number of parcels may be less  
34 than 50.

35 (8) Subdivisions containing less than five parcels and not used  
36 for residential purposes shall be exempted from the requirements  
37 of this section. However, in that event, a condition may be placed  
38 on the approval of a parcel map that if a building permit is  
39 requested for construction of a residential structure or structures  
40 on one or more of the parcels within four years, the fee may be

1 required to be paid by the owner of each parcel as a condition of  
2 the issuance of the permit.

3 (9) If the subdivider provides park and recreational  
4 improvements to the dedicated land, the value of the improvements  
5 together with any equipment located thereon shall be a credit  
6 against the payment of fees or dedication of land required by the  
7 ordinance.

8 (b) Land or fees required under this section shall be conveyed  
9 or paid directly to the local public agency which provides park  
10 and recreational services on a communitywide level and to the  
11 area within which the proposed development will be located, if  
12 that agency elects to accept the land or fee. The local agency  
13 accepting the land or funds shall develop the land or use the funds  
14 in the manner provided in this section.

15 (c) If park and recreational services and facilities are provided  
16 by a public agency other than a city or county, the amount and  
17 location of land to be dedicated or fees to be paid shall, subject to  
18 paragraph (2) of subdivision (a), be jointly determined by the city  
19 or county having jurisdiction and that other public agency.

20 (d) This section does not apply to commercial or industrial  
21 subdivisions or to condominium projects or stock cooperatives  
22 that consist of the subdivision of airspace in an existing apartment  
23 building that is more than five years old when no new dwelling  
24 units are added.

25 (e) Common interest developments, as defined in Section ~~4354~~  
26 ~~4100~~ of the Civil Code, shall be eligible to receive a credit, as  
27 determined by the legislative body, against the amount of land  
28 required to be dedicated, or the amount of the fee imposed,  
29 pursuant to this section, for the value of private open space within  
30 the development which is usable for active recreational uses.

31 (f) Park and recreation purposes shall include land and facilities  
32 for the activity of “recreational community gardening,” which  
33 activity consists of the cultivation by persons other than, or in  
34 addition to, the owner of the land, of plant material not for sale.

35 (g) *As used in this section with regard to the expenditure of fees,*  
36 *the term “fee” includes any interest income generated from a fee*  
37 *charged and collected pursuant to this section.*

38 ~~(g)~~

- 1     (*h*) This section shall be known, and may be cited, as the
- 2     Quimby Act.

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